

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Pamela Reynolds,

Complainant,
vs.

ORDER OF DISMISSAL

Fridley City Council: Scott Lund,
Mayor; Bob Barnette, Councilmember-
at-large; Jim Saefke, Ward 1
Councilmember; Dolores Varichak,
Ward 2 Councilmember; Ann Bolkom,
Ward 3 Councilmember,

Respondents.

On October 23, 2007, Pamela Reynolds filed a Complaint with the Office of Administrative Hearings alleging that the Respondents violated Minn. Stat. § 211B.07. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 23, 2007, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on October 23, 2007.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a prima facie violation of Minn. Stat. § 211B.07. Therefore, the Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Pamela Reynolds against the Fridley City Council: Scott Lund, Mayor; Bob Barnette, Councilmember-at-large; Jim Saefke, Ward 1 Councilmember; Dolores Varichak, Ward 2 Councilmember; and Ann Bolkom, Ward 3 Councilmember, is DISMISSED.

Dated: October 24, 2007

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

This campaign complaint concerns the November 20, 2007, special election in the City of Fridley that has been called to allow eligible voters to vote on the following ballot question:

Shall the Fridley City Charter be amended to eliminate utility rate restrictions and allow the City Council to establish rates that cover the cost of operations?

The Complainant, Pamela Reynolds, is a Fridley resident who opposes the proposed City Charter amendment. The Respondents are members of the Fridley City Council, including the mayor, who support the proposed amendment. According to the Complaint, on October 9, 2007, the League of Women Voters sponsored a public forum on the special election and proposed Charter amendment. The Complainant spoke in opposition to the Charter amendment, City Councilmember Jim Saefke spoke in support of it, and the City Finance Director presented neutral factual information. The Complaint states that during the forum, the Mayor participated by “asking questions and circulating the microphone.” In addition, the Complainant alleges that flyers in support of the ballot initiative were placed on tables outside of the forum’s meeting room. The flyer encourages residents to “Vote Yes” on the ballot question and lists several facts in support of amending the charter, as well as several consequences of voting “No.” A disclaimer on the flyer states that it was prepared and paid for by “Residents for Maintaining Water Systems.” Above the disclaimer is the statement: “For more information call Bill Holm at [phone number] or Scott Lund at [phone number].” Scott Lund is the mayor of Fridley. In addition, the back of the flyer list names of persons who support the charter amendment, including Scott Lund and the following Fridley City Councilmembers: Jim Saefke, Bob Barnette, Ann Bolkcom, and Dolores Varichak.

The Complainant alleges that the group that prepared and distributed the flyer (“Residents for Maintaining Water Systems”) is made up of those persons listed on the back of the flyer as “Supporters of a changed Charter,” which includes the Mayor and City Councilmembers. According to the Complainant, by distributing this flyer urging voters to vote “yes” on the ballot question, and by speaking in support of the ballot initiative at the public forum, the Mayor and City

Councilmembers have violated Minn. Stat. § 211B.07 by using their elected positions to unduly influence voters.

Minn. Stat. § 211B.07 provides as follows:

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

In order to allege a prima facie violation of Minn. Stat. § 211B.07, the Complainant must put forward facts that would support finding the Respondents used or threatened “undue influence” to “compel” a person to vote for a ballot question. “Undue influence” has been defined to mean:

coercion, amounting to a destruction of one’s free will, by means of importunities, flatteries, insinuations, suggestions, arguments, or any artifice not amounting to duress. It is ordinarily of an insidious nature, and exercised by one in close confidential relation to the victim.¹

The Merriam Webster Dictionary defines “compel” to mean “to drive or urge forcefully or irresistibly;” or “to cause to do or occur by overwhelming pressure.”²

When reviewing a Complaint to determine whether it sets forth a prima facie violation of the Fair Campaign Practices Act, this Office is required to credit as true all of the facts that are alleged in the Complaint, provided that those facts are not “patently false” or “inherently incredible.”³ Even assuming that the Fridley City Council did distribute the flyer at issue and did participate in the public forum in the manner alleged, the Administrative Law Judge concludes that the Complainant has failed to allege sufficient facts to support finding the Respondents used “undue influence” to compel voters to support the ballot initiative in violation Minn. Stat. § 211B.07.

Section 211B.07 prohibits misconduct: the use or threat of force, coercion, violence, restraint, damage, harm, loss including loss of employment or economic reprisal, or undue influence to compel a person to vote for or against a ballot question. The conduct alleged in the Complaint does not come within the spirit or the letter of the statute, and cannot reasonably be characterized as

¹ *Leuba v. Bailey*, 251 Minn. 193, 201, 88 N.W.2d 73, 79 (Minn. 1958); *In re Welfare of N.M.C.*, 447 N.W.2d 14, 16 (Minn. App. 1989).

² Merriam Webster Online Dictionary.

³ See, e.g., *Halverson v. Nelson*, OAH Docket No. 4-6301-16282-CV, slip op. at 2 (2004) (<http://www.oah.state.mn.us/aljBase/630116282.primafacie.htm>); compare also, *Elzie v. Commissioner of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980) (Dismissal of a complaint is proper only if it appears to a certainty that plaintiff can introduce no facts consistent with the complaint to support granting the relief requested).

“undue influence.” Instead, the Complainant alleges only that the Respondents used their public office and positions of authority to urge residents to vote “Yes” on the ballot question. Nothing prohibits members of the City Council or any other person from expressing their views on a ballot question. In fact, it is probably desirable. Absent some evidence that the Mayor and City Council Members used coercion to force persons to vote for the ballot question against their will, the Complaint’s allegations are insufficient to support a prima facie violation of Minn. Stat. § 211B.07. Distributing a flyer and speaking at a public forum does not amount to using undue influence to compel persons to vote for a ballot question.

S.M.M.